

Amend **CSHB 448** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 402.031, Government Code, is amended by adding Subsections (c-1), (e), and (f) to read as follows:

(c-1) The statement must also include an addendum containing model terms for instruments of conveyance under Chapter 21, Property Code, that substantially comply with Section 402.032 of this code.

(e) At least once every two years, the attorney general shall:

(1) evaluate the landowner's bill of rights statement, including the addendum required by Subsection (c-1), for compliance with the requirements of this section, including the requirement under Subsection (d) that the statement be written in plain language designed to be easily understood by the average property owner; and

(2) subject to Subsection (f), make any change to the landowner's bill of rights statement and addendum that the attorney general determines necessary to comply with the requirements of this section, including making a change to the writing style of the statement or addendum necessary to improve compliance with Subsection (d).

(f) Before making any changes to the landowner's bill of rights statement under Subsection (e), the office of the attorney general shall:

(1) publish the proposed changes in the Texas Register; and

(2) accept public comment regarding the proposed statement for a reasonable period after the date the proposed statement is published under Subdivision (1).

SECTION _____. Subchapter B, Chapter 402, Government Code, is amended by adding Section 402.032 to read as follows:

Sec. 402.032. ADDENDUM TO LANDOWNER'S BILL OF RIGHTS: MODEL INSTRUMENT OF CONVEYANCE. (a) The addendum required under Section 402.031(c-1) must contain the following model instruments of conveyance:

(1) a model instrument to convey a pipeline right-of-way easement or an easement related to pipeline appurtenances, to be provided to a property owner by a private entity as defined by Section 21.0114, Property Code, that addresses the following general terms:

(A) the maximum number of pipelines that may be installed under the instrument for a pipeline right-of-way;

(B) a description of the types of pipeline appurtenances that are authorized to be installed under the instrument for pipeline-related appurtenances, such as pipes, valves, compressors, pumps, meters, pigging stations, dehydration facilities, electric facilities, communication facilities, and any other appurtenances that may be necessary or desirable in connection with a pipeline;

(C) the maximum diameter, excluding any protective coating or wrapping, of each pipeline to be initially installed under the instrument for a pipeline right-of-way;

(D) the type or category of substances permitted to be transported through each pipeline to be installed under the instrument;

(E) a general description of any aboveground equipment or facility the private entity intends to install, maintain, or operate under the instrument for a pipeline easement on the surface of the easement;

(F) a description or illustration of the location of the easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property;

(G) the maximum width of the easement under the instrument;

(H) the minimum depth at which each pipeline to be installed under the instrument for a pipeline right-of-way will initially be installed;

(I) a provision identifying whether the private entity intends to double-ditch areas of the pipeline easement that are not installed by boring or horizontal directional drilling;

(J) a provision requiring the private entity to

provide written notice to the property owner at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property if and when the private entity assigns the interest under the instrument to another entity, provided that the provision does not require notice by the private entity for assignment to an affiliate or to a successor through merger, consolidation, or other sale or transfer of all or substantially all of its assets and businesses;

(K) a provision describing whether the easement rights are exclusive or nonexclusive;

(L) a provision limiting the private entity's right to grant a third party access to the easement area for a purpose that is not related to the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under the instrument and of pipeline appurtenances to be installed under the instrument;

(M) a provision regarding the property owner's right to recover actual monetary damages arising from the construction and installation of each pipeline to be installed under the instrument, or a statement that the consideration for the instrument includes any monetary damages arising from the construction and installation of each pipeline to be installed under the instrument;

(N) a provision regarding the property owner's right after initial construction and installation of each pipeline to be installed under the instrument to actual monetary damages arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under the instrument, or a statement that consideration for the instrument includes any monetary damages arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under the instrument;

(O) a provision:

(i) regarding the removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by the private entity under the instrument; or

(ii) providing for the payment for any damage caused by the private entity to gates and fences described by Subparagraph (i), if any, to the extent that the gates or fences are not restored or paid for as part of the consideration paid for the instrument;

(P) a provision:

(i) regarding the private entity's obligation to restore the pipeline easement area and the property owner's remaining property, if any, used by the private entity to as near to original condition as is reasonably practicable and to maintain the easement in a manner consistent with the purposes for which the easement will be used by the private entity under the instrument; or

(ii) providing for the private entity to reimburse the property owner for actual monetary damages incurred by the property owner that arise from damage to the pipeline easement area or the property owner's remaining property, if any, to the extent caused by the private entity and not restored or paid for as part of the consideration for the instrument; and

(Q) a provision describing the private entity's rights of ingress, egress, entry, and access on, to, over, and across the property owner's property under the instrument;

(2) a model instrument to convey an electric transmission line right-of-way easement, to be provided to a property owner by a private entity as defined by Section 21.0114, Property Code, that addresses the following general terms:

(A) a general description of the uses of the surface of the property to be encumbered by the easement the entity intends to acquire;

(B) a description or illustration of the location of the easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property;

(C) the maximum width of the easement under the instrument;

(D) the manner in which the entity will access the easement under the instrument;

(E) a provision limiting the private entity's right to grant to a third party access to the easement area for a purpose that is not related to the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of the electric and appurtenant facilities installed under the instrument;

(F) a provision regarding the property owner's right to recover actual monetary damages arising from the construction, operation, repair, maintenance, inspection, replacement, and future removal of lines and support facilities after initial construction in the easement, if any, or a statement that the initial consideration for the easement instrument includes such damages;

(G) a provision:

(i) regarding the removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by the private entity under the instrument; or

(ii) providing for the payment for any damage caused by the private entity to gates and fences described by Subparagraph (i), if any, to the extent that the gates or fences are not restored or paid for as part of the consideration for the instrument;

(H) a provision regarding the private entity's obligation to restore the easement area and the property owner's remaining property to the easement area's and the remaining property's original contours and grades, to the extent reasonably practicable, unless the safety or operational needs of the private entity and the electric facilities would be impaired, and:

(i) a provision regarding the entity's obligation to restore the easement area and the property owner's remaining property following any future damages directly attributed to the use of the easement by the private entity, to the extent reasonably practicable unless the safety or operational needs of the private entity and the electric facilities would be impaired; or

(ii) a provision that the consideration for the easement instrument includes damages as described by

Subparagraph (i) to the easement area and the property owner's remaining property;

(I) a provision describing whether the easement rights are exclusive, nonexclusive, or otherwise limited under the terms of the instrument; and

(J) a prohibition against the assignment of the entity's interest in the property to an assignee that will not operate as a utility subject to the jurisdiction of the Public Utility Commission of Texas or the Federal Energy Regulatory Commission without written notice to the property owner at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property;

(3) a prohibition against any use by the private entity of the property rights being conveyed by the instrument, other than a use stated in the instrument, without the express written consent of the property owner; and

(4) a provision that the terms of the instrument will bind the successors and assigns of the property owner and private entity.

(b) Each model instrument of conveyance for the addendum required under Section 402.031(c-1) must include a provision that is substantially similar to the following:

NOTICE OF ADDITIONAL NEGOTIABLE TERMS

In addition to the terms of an instrument of conveyance under Chapter 21, Property Code, provided to a property owner by a private entity as defined by Section 21.0114, Property Code, the property owner may negotiate for the following terms to be included in the instrument of conveyance:

(1) a provision regarding the property owner's right to negotiate to recover damages, or a statement that the consideration for the instrument includes damages, for:

(A) damage to certain vegetation; and

(B) the income loss from disruption of existing agricultural production or existing leases based on verifiable loss or lease payments; and

(2) a provision:

(A) requiring the private entity to maintain at all times while the private entity uses the easement, including during construction and operations on the easement, commercial liability insurance or self-insurance:

(i) issued by an insurer authorized to issue liability insurance in this state, if maintaining commercial liability insurance; and

(ii) insuring the property owner against liability for personal injuries and property damage sustained by any person to the extent caused by the negligence of the private entity or the private entity's agents or contractors and to the extent allowed by law; or

(B) if the private entity is subject to the electric transmission cost-of-service rate jurisdiction of the Public Utility Commission of Texas or has a net worth of at least \$25 million, requiring the private entity to maintain self-insurance or commercial liability insurance at levels approved by the Public Utility Commission of Texas in the entity's most recent transmission cost-of-service base rate proceeding.

(c) Each model instrument of conveyance for the addendum required under Section 402.031(c-1) must include a statement, in bold print and a larger font than the other portions of the offer, indicating whether the compensation being offered includes:

(1) damages to the remainder, if any, of the property owner's remaining property; or

(2) an appraisal of the property, including damages to the remainder, if any, prepared by a certified appraiser certified to practice as a certified general appraiser under Chapter 1103, Occupations Code.

(d) Each model instrument of conveyance for the addendum required under Section 402.031(c-1) must include a notice provision in which the condemning entity shall provide the name and telephone number of a representative of the entity who is:

(1) an employee of the entity;

(2) an employee of an affiliate providing services on behalf of the entity;

(3) a legal representative of the entity; or

(4) if the entity does not have employees, an individual designated to represent the day-to-day operations of the entity.

SECTION _____. Section 21.0113(b), Property Code, is amended to read as follows:

(b) An entity with eminent domain authority has made a bona fide offer if:

(1) an initial offer is made in writing to a property owner that includes:

(A) a copy of the landowner's bill of rights statement prescribed by Section 402.031, Government Code, including the appropriate model instrument of conveyance from the addendum prescribed by Section 402.031(c-1), Government Code, if applicable; and

(B) an instrument of conveyance, provided that if the entity is a private entity as defined by Section 21.0114(a), the instrument must comply with Section 21.0114, as applicable, unless the entity has previously provided an instrument complying with Section 21.0114;

(2) a final offer is made in writing to the property owner;

(3) the final offer is made on or after the 30th day after the date on which the entity makes a written initial offer to the property owner;

(4) before making a final offer, the entity obtains a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property;

(5) the final offer is equal to or greater than the amount of the written appraisal obtained by the entity;

(6) the following items are included with the final offer or have been previously provided to the owner by the entity:

(A) a copy of the written appraisal;

(B) a copy of the deed, easement, or other instrument conveying the property sought to be acquired; and

(C) the landowner's bill of rights statement prescribed by Section 21.0112; and

(7) the entity provides the property owner with at least 14 days to respond to the final offer and the property owner does not agree to the terms of the final offer within that period.

SECTION _____. Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.0114 to read as follows:

Sec. 21.0114. INSTRUMENTS OF CONVEYANCE OF CERTAIN EASEMENTS. (a) In this section, "private entity":

(1) means:

(A) a for-profit entity, as defined by Section 1.002, Business Organizations Code, however organized, including an affiliate or subsidiary, authorized to exercise the power of eminent domain to acquire private property for public use; or

(B) a corporation organized under Chapter 67, Water Code, that has a for-profit entity, however organized, as the sole or majority member; and

(2) does not include an entity governed by the Natural Gas Act (15 U.S.C. Section 717 et seq.) unless the entity seeks to acquire property under this chapter.

(b) This section:

(1) applies only to a deed, agreement, or other instrument of conveyance for a pipeline right-of-way easement or an electric transmission line right-of-way easement that is included with an offer made under this chapter to acquire a property interest for a public use; and

(2) does not apply in relation to:

(A) a pipeline or appurtenance that is:

(i) downstream of the point where natural gas is measured and custody is transferred from a transmission pipeline to a gas local distribution company for distribution to end-use customers; or

(ii) at a location where a gas utility taps a transmission pipeline to a city gate, provided that the pipeline does not exceed 100 feet; or

(B) an electric power line that operates below 60 kilovolts.

(c) Except as otherwise provided by this section, a deed, agreement, or other instrument of conveyance provided to a property

owner by a private entity with eminent domain authority to acquire the property interest to be conveyed must substantially conform to the appropriate model instrument of conveyance from the addendum prescribed by Section 402.032, Government Code.

(d) A private entity or the property owner may, after the entity provides an instrument in compliance with Subsection (c):

(1) negotiate for and agree to terms and conditions not required by Subsection (c), including terms and conditions that differ from or are not included in a subsequent condemnation petition; and

(2) negotiate for and agree to a deed, agreement, or other instrument of conveyance that does not include or includes terms that differ from the terms required by Subsection (c).

(e) Except as provided by this subsection, this section does not prohibit a private entity or the property owner from negotiating for or agreeing to amend, alter, or omit the terms required by Subsection (c) at any time after the private entity first provides a deed, agreement, or other instrument containing the required general terms to the property owner, whether before or at the same time that the entity makes an initial offer to the property owner. A private entity that changes the terms required by Subsection (c) must provide a copy of the amended deed, agreement, or other instrument of conveyance to the property owner not later than the seventh day before the date the private entity files a condemnation petition relating to the property unless the parties agree in writing to waive the notice.

SECTION _____. (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to Chapter 21, Property Code, apply to the acquisition of real property in connection with an initial offer made under Chapter 21, Property Code, on or after January 1, 2022. An acquisition of real property in connection with an initial offer made under Chapter 21, Property Code, before January 1, 2022, is governed by the law applicable to the acquisition immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) The changes in law made by this Act to Chapter 21, Property Code, do not apply to an electric transmission project for

which the Public Utility Commission of Texas has issued a final and appealable order that amends a certificate of convenience and necessity before January 1, 2022.